

NORTH DAKOTA
EXTRADITION MANUAL

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ATTORNEY GENERAL

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ORIGINAL CRIMINAL OFFENSE

Required Documentation

Submit 4 executed original sets consisting of the following documents:

1. Application For Extradition.
2. All Affidavits (including No. 4 if applicable).
3. Certified copies of Information, Indictment, or Complaint and Warrant of Arrest.
4. Probable Cause and Identification Affidavits.
5. Copies of all applicable North Dakota statutes pertaining to the crime and punishment (including N.D.C.C. § 12.1-23-05 if theft charged).

APPLICATION FOR EXTRADITION

TO THE GOVERNOR OF THE STATE OF NORTH DAKOTA:

I have the honor to request that you issue a requisition upon the Governor of the State of _____ for extradition of _____ who stands charged by _____ (Complaint, Information, or Indictment) with the crime of _____, committed in the County of _____ in the State of North Dakota, on the ____ day of _____, 20__, and who, to avoid prosecution, fled from the jurisdiction of the State of North Dakota and is now a fugitive from justice, and, as I am now informed, is within the jurisdiction of the State of _____, at _____.

I hereby certify that in my opinion the ends of public justice require that the criminal and fugitive be brought back to the State of North Dakota for trial at public expense. I have carefully examined the facts and believe that I have sufficient evidence to secure the conviction of said fugitive and that the offense charged and the punishment therefore is defined in section(s) _____ of the North Dakota Century Code. I further certify that this application is made in good faith, with the sole purpose of prosecuting the accused fugitive for the crime so charged, and not to secure his return to this state to afford opportunity for service of civil process upon him, or for any other purpose than said prosecution.

I nominate _____ as a proper person to be appointed agent of the State and certify that he has no personal interest in the arrest and return of the fugitive other than a proper performance of his official duty.

Dated this _____ day of _____, 20__.

State's Attorney
_____ County, North Dakota

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF _____)

I, _____ being duly sworn, on my oath
say that the facts stated in the foregoing application are true.

Subscribed and sworn to before me this
_____ day of _____ 20__.

Notary Public

TO THE GOVERNOR:

I have carefully examined and approved the foregoing application and
accompanying papers and it is my opinion that it would be proper for you to issue the
requisition asked for.

Attorney General
State of North Dakota

By: _____
Assistant Attorney General

NOTE:
1. Include all North Dakota statutes pertaining to crime and punishment (N.D.C.C. § 12.1-32-01).
If charging the crime of theft, also include N.D.C.C. § 12.1-23-05 (Grading of Theft Offenses).
2. In addition to the name of the sheriff, include "or his designated agent."

Additional Affidavits

Probable Cause Affidavit:

A separate affidavit, acknowledged by a judge, is now required by some states as a necessary attachment to the extradition request. This affidavit should set forth the factual basis establishing probable cause for the issuance of the complaint and warrant of arrest. A transcript of a probable cause hearing could also be attached to the affidavit, although this is not a requirement if the affidavit establishes probable cause.

Although many states accept a certified copy of the complaint and warrant as sufficient to establish probable cause, it is the better practice to provide an additional affidavit to avoid an otherwise unforeseen return of the extradition request. An unsworn information signed by the prosecuting attorney has not been accepted by some states as sufficient alone to support an arrest warrant since there is no proof, in the form of an affidavit or otherwise, that the warrant was issued after a finding of probable cause.

This affidavit may be a part of the certified copies of court documents included with the charging documents and warrant and verified by the clerk in Affidavit No. 1. The probable cause affidavit is proof that the warrant was issued after a determination of probable cause. Therefore, the affidavit should establish, by date of execution or filing, that it was executed before, or at the time of, the issuance of the arrest warrant and submitted for review to the judge or magistrate.

If the affidavit is dated after the issuance of the warrant, on its face it could not have been a basis for issuance of the warrant.

Identification Affidavit:

A number of states require a separate affidavit establishing the identity of the fugitive. This affidavit should include a physical description of the fugitive (race; skin, hair, and eye color; height; weight), any other identifying or distinguishing features, and a social security number. As an example:

Name:	John L. Smith
Sex:	Male
Race:	Caucasian
Age:	53 -- DOB 1/15/58
Height:	6' 2"
Weight:	225
Hair:	Brown
Eyes:	Brown
Scars:	On left forearm and tattoo on right arm reading "MOM"
Soc. Sec. No.:	000-00-0000

A photograph and/or a fingerprint card could also be included as an exhibit to the affidavit.

This Identification Affidavit could be included within the Probable Cause Affidavit.

It is the better practice to include such an affidavit with all extradition requests even if not mandated by the state holding the fugitive. This affidavit may avoid an expensive and time-consuming identification hearing prior to return of the fugitive to North Dakota.

VIOLATION OF PROBATION

Required Documentation

Submit 4 executed original sets consisting of the following documents:

1. Application For Extradition.
2. All Affidavits (including No. 4 if applicable).
3. Certified copies of Complaint, Information or Indictment; Judgment or Order Deferring Imposition of Sentence; Petition to Revoke Probation; and Order to Apprehend.
4. Affidavit of Identification.
5. Copies of all applicable North Dakota statutes pertaining to underlying crime and punishment (N.D.C.C. § 12.1-32-01 and N.D.C.C. §12.1-23-05 if theft conviction), and probation conditions and requirements (N.D.C.C. § 12.1-32-07).

APPLICATION FOR EXTRADITION

TO THE GOVERNOR OF THE STATE OF NORTH DAKOTA:

I have the honor to request that you issue a requisition upon the Governor of the State of _____ for extradition of _____

who stands convicted by _____
(Complaint, Information, or Indictment)

with the crime of _____, committed in the County of _____ in the State of North Dakota, on the ____ day of _____, 20__, thereafter having violated the terms and conditions of probation, and who, to avoid prosecution, fled from the jurisdiction of the State of North Dakota and is now a fugitive from justice, and, as I am now informed, is within the jurisdiction of the State of _____, at _____.

I hereby certify that in my opinion the ends of public justice require that the criminal and fugitive be brought back to the State of North Dakota for trial at public expense. I have carefully examined the facts and believe that I have sufficient evidence to secure the conviction of said fugitive and that the offense charged and the punishment therefore is defined in Section(s) _____ of the North Dakota Century Code. I further certify that this application is made in good faith, with the sole purpose of prosecuting the accused fugitive for the crime so charged, and not to secure his return to this state to afford opportunity for service of civil process upon him, or for any other purpose than said prosecution.

I nominate _____ as a proper person to be appointed agent of the State and certify that he has no personal interest in the arrest and return of the fugitive other than a proper performance of his official duty.

AFFIDAVIT NO. 4

AFFIDAVIT TO BE MADE BY THE PRINCIPAL COMPLAINING WITNESS IN CASE OF THEFT OR FORGERY

STATE OF NORTH DAKOTA)
)
County of _____)

On this ____ day of _____, 20__, before me, personally appeared _____ who, being by me first duly sworn on oath did say that ___he is the principal complaining witness in the pending prosecution of _____ mentioned in the foregoing application; that this application is made in good faith for the sole purpose of punishing the accused; that ___he does not desire or expect to use the said prosecution for the purpose of collecting a debt or for any private purpose whatsoever, and will not directly use the same for any of said purposes.

Subscribed and sworn to before me this ____ day of _____, 20__.

(Judge or Magistrate)

NOTE:
1. Use only for the listed crimes.
2. Executed by the person who signed the complaint, if possible.
3. Acknowledged by same judge or magistrate named in Affidavit Nos. 2 and 3.

NOTE:
This affidavit is not absolutely required in all extraditions involving Theft or Forgery. However, it may be important in these cases if the demanded person claims that the extradition is being sought only for collection of money that has been illegally obtained. Although not required, this affidavit will be helpful in refuting this claim. It should be noted, however, that failure to obtain an executed affidavit by the principal complaining witness will not ordinarily prevent a successful extradition for these offenses.

Additional Affidavits

Probable Cause Affidavit:

Unlike an extradition for the original crime, submission of the Petition to Revoke Probation and other related documents will generally be sufficient to establish probable cause for the issuance of the warrant or Order to Apprehend. Unless the Application for Extradition also requests return of the fugitive for an offense in addition to the probation violation, a separate probable cause affidavit is not required. However, an Affidavit of Identification should be prepared and submitted.

Identification Affidavit:

A number of states require a separate affidavit establishing the identity of the fugitive. This affidavit should include a physical description of the fugitive (race; skin, hair, and eye color; height; weight), any other identifying or distinguishing features, and a social security number. As an example:

Name:	John L. Smith
Sex:	Male
Race:	Caucasian
Age:	53 -- DOB 1/15/58
Height:	6' 2"
Weight:	225
Hair:	Brown
Eyes:	Brown
Scars:	On left forearm and tattoo on right arm reading "MOM"
Soc. Sec. No.:	000-00-0000

A photograph and/or a fingerprint card could also be included as an exhibit to the affidavit.

It is the better practice to include such an affidavit with all extradition requests even if not mandated by the state holding the fugitive. This affidavit may avoid an expensive and time-consuming identification hearing prior to return of the fugitive to North Dakota.

REIMBURSEMENT OF EXTRADITION EXPENSES

The 1987 Legislature adopted N.D.C.C. § 29-30.3-26 which authorizes the reimbursement of extradition expenses. If the charged offense is a felony, the expenses of returning the fugitive to North Dakota will be paid out of the State treasury and, in all other cases, such expenses will be paid out of the county treasury in the county in which the crime is alleged to have been committed.

The expenses paid for the return of fugitives will be in accordance with N.D.C.C. §§ 44-08-04 and 54-06-09, the mileage and per diem expense limitations for state employees in the performance of their official duties. A non-employee travel reimbursement claim form (SFN 10230) should be filed with the Attorney General's office upon completion of an extradition trip. The claim form can be accessed at <http://www.nd.gov/eforms/Doc/sfn10230.pdf>. Out-of-state per diem rates can be found at <http://www.gsa.gov/portal/category/21287>. Make sure that all portions of the form pertaining to dates and location of travel, time of arrival and departure, expenses incurred, and purpose of trip are completed.

Reimbursement will not be made if the fugitive is returned under the Interstate Agreement on Detainers, upon a waiver of extradition, prior to the execution of a governor's requisition, or other provision of law that permitted return to this state other than by extradition.

EXTRADITION FOR MISDEMEANOR OFFENSES

Although classification of an offense as a misdemeanor may be important when determining the authority to arrest a fugitive (see, N.D.C.C. §§ 29-30.3-04 and 29-30.3-05.), this classification does not prevent issuance of a Governor's warrant and subsequent extradition of a fugitive.

A demand for extradition requires only that the fugitive be charged with, or convicted of, a "crime" in the demanding state. N.D.C.C. § 29-03.3-08.

Many factors are involved in deciding whether to seek extradition for a misdemeanor offense. Local law enforcement should examine the nature of the offense, length of time that has passed, wishes of the victim, potential costs involved and other factors with their local state's attorney before commencing extradition proceedings. Costs for extradition or misdemeanor charges must be paid out of the county treasury in which the crime is alleged to have been committed. N.D.C.C. § 29-30.3-26.

INTERSTATE RENDITION OF JUVENILES

Juveniles charged with a delinquent act for violating a criminal law may be returned to this state by use of rendition proceedings in addition to other procedures authorized by the Interstate Compact on Juveniles found in N.D.C.C. ch. 27-22. The rendition procedures to be followed are found in N.D.C.C. § 27-22-07.

UNIFORM EXTRADITION AND RENDITION ACT

The Uniform Extradition and Rendition Act is found at [N.D.C.C. ch. 29-30.3](#).